IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 941 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHARMSHI RAMABHAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR BS SUPEHIA for the Appellant.
MR HM PRACHCHHAK, APP, for the respondent.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 29/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. Present appeal arises out of a judgment and order rendered by learned Additional Sessions Judge, Jamnagar, in Sessions case No.25 of 1999, on 30th July, 1999, convicting the appellant under Section 302 of the Indian Penal Code and Section 25(1)(A) of the Arms Act for the offence of murder of Dharnant Arjan Aher with a muzzle loading gun on 12th November, 1998, in the outskirts of Village Nandana of Jamjodhpur Taluka. The appellant was sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default thereof, to undergo simple imprisonment for six months for the offence of murder punishable under Section 302 of I. P. C. He was also ordered to undergo rigorous imprisonment for six months and to pay a fine of Rs.200/-, in default thereof, to undergo simple imprisonment for one month for the offence punishable under Section 25(1)(A) of the Arms Act.

2. The appellant is alleged to have pledged his wrist watch with deceased-Dharnant Arjan Aher for Rs.50/-. On the day of the incident, while Dharnant was talking to his cousin, Alsibhai Bhimsibhai, at about 8.00 P.M., the appellant approached him and demanded return of the wrist watch saying that he would pay Rs.50/- later on. Deceased-Dharnant turned down his demand and, in that, it appears that there was an altercation. The appellant fired a shot on the deceased from the gun that the appellant was carrying with him and the deceased succumbed to the injury sustained by him in chest from the gunshot. The appellant went away therefrom as Alsibhai stood there dumbstruck. Alsibhai then went to Dhrafa Police Station, which is at a distance of about 16 kms. and lodged an F. I. R., which is at Exhibit 25. On the basis of the F. I. R., offence was registered and investigation started. The Investigating Agency, having found sufficient material against the appellant, filed charge sheet against him in the Court of learned Judicial Magistrate, First Class, Jamjodhpur, who, in turn, committed the case to the Court of Sessions and Sessions Case No.25 of 1999 came to be registered.

2.1 Charge was framed against the appellant at Exhibit 4, to which he pleaded not guilty and claimed to be tried. The prosecution led evidence and, on the basis of that evidence, the Trial Court came to a conclusion that the prosecution was successful in establishing charges against the accused-appellant and recorded conviction, as stated above. Aggrieved by the said judgment and order, the accused- convict has preferred this appeal.

3. Learned Advocate, Mr. Supehia, appearing for the appellant submitted that the prosecution case depends on evidence of Alsibhai Bhimsibhai, who poses as an eye-witness. Mr. Supehia submitted that Alsibhai is cousin of the deceased and is, therefore, an interested witness. He also submitted that from the medical evidence it is clear that there was blackening around the entry wound on person of the deceased, which would indicate that the shot was fired from a very close range. This would indicate a possibility of a scuffle and, in turn, a possibility of an accidental fire resulting into death of the deceased. Mr. Supehia, alternatively, submitted that there was an altercation and the appellant is alleged to have fired the gunshot on being provoked

because of refusal on part of the deceased to return the wrist watch. The case, therefore, would fall in the category of culpable homicide not amounting to murder and, therefore, the appeal may be favourably considered.

4. Learned Additional Public Prosecutor, Mr. Prachchhak, has opposed this appeal. According to him, there is no evidence of any scuffle taking place between the deceased and the appellant. The appellant had gone to the place of incident with an unlicensed loaded gun and used the same on refusal on part of the deceased to return the watch, relying on promise of the appellant that he would return Rs.50/- later on. According to the learned Additional Public Prosecutor, this can hardly be a ground for any provocation. It cannot be said to be a sudden provocation nor it can be said to be gross. There are no reasons to doubt the testimony of Alsibhai and the testimony cannot be discarded only because he happens to be cousin of the deceased. He, therefore, submitted that the Trial Court has considered all relevant aspects and the appeal may, therefore, be dismissed.

5. We have examined the record and proceedings from the perspective suggested by rival sides. The prosecution case mainly depends on deposition of Alsibhai Bhimsibhai (Exhibit 11), Nitinbhai Durlabhbhai (Exhibit 12) and Jivabhai Kalabhai (Exhibit 13), who are eye-witnesses to the incident.

5.1 Alsibhai (Exhibit 11) happens to be cousin of the deceased. He stays at Ambardi Meghpar and on the day of the incident, he was going to village Nandana. He came across deceased-Dharnant and, therefore, they met and were having a conversation. At that time, the appellant went to them with a gun in his hand and asked Dharnant to hand over his writ watch. The appellant also told the deceased that he would return Rs.50/- to the deceased later on. Deceased-Dharnant refused and on his refusal, the appellant got annoyed and fired a shot from his gun on Dharnant. On sustaining the injury with the gun shot in chest, Dharnant fell down. The appellant ran away with the gun. The deceased was bleeding from mouth, nose, ears, etc. In the meantime, Nitinbhai Durlabhbhai, Jivabhai Kalabhai and Devarkhibhai Nathubhai came to the place. Dharnant expired

immediately and the witness, therefore, went to Dhrafa Police Station, which is at a distance of 16 kms., and lodged the F. I. R. The witness identified the clothes of the deceased. He also identified the gun and stated that he had shown the place of incident to the police.

5.1.1 The witness is cross-examined. He states that he is a graduate and studying law at the Law College, at Porbandar. The college timings are from 5 P.M. to 8.00 P.M. He denies that attending classes in the law college are compulsory. He states that he has no material to show that he had not gone to Law College on the day of incident. He stated that the altercation between the deceased and the appellant lasted for about a minute. He also states that there was no scuffle between the appellant and the deceased. He states that he does not know whether in a muzzle loading gun, for firing a second shot, it has to be loaded once again. He admits that, in his F. I. R., he has not stated that Nitin Durlabh, Jiva Kala and Devarkhi Nathu had arrived at the place of incident. He says that a wrist watch with black dial was recovered by the police from the place of incident. He denies that it was a

watch usually worn by the deceased on wrist. He admits that the dispute between the deceased and the appellant was on account of the wrist watch, which was recovered on the next day.

5.2 Witness-Nitin Durlabh is examined at Exhibit 12. and witness-Jiva Kala is examined at Exhibit 13. They state that they were travelling in an auto-rickshaw. When they were at a distance of about 100 feet from the bridge, they saw three persons standing. They also saw Dharamshi Rama (the appellant) firing a gun shot on Dharnant. The third person was Alsibhai. They say that they along with Devarkhibhai, the Rickshawalla, went to the place of incident where Alsibhai was standing and Dharnant was lying. They say that they saw the appellant running away. Jiva Kala also states that he saw the appellant running away with a gun in his hand. They have been cross-examined, but nothing material in favour of the appellant turns on it.

5.3 Witness-Khoda Natha (Exhibit 14) says that, on the day of the incident, after returning from his agricultural work, he was at his Pan Beedi Cabin. The deceased and the appellant had some

dispute on a wrist watch and Rs.50/-. They were separated by the villagers and then the deceased came to his cabin. The deceased asked for some eatable, which he did not have and, therefore, the deceased waited at his shop for some time and then went away. The deceased was wearing the wrist watch, which is Muddamal Article No.3.

5.4 Dr. Dipakkumar Premjibhai Meghpara is examined at Exhibit 9. He had performed the postmortem. He has deposed that the deceased had four external injuries with corresponding internal injuries. According to him, the deceased died of haemorrhagic shock due to fatal injuries and extensive damage to left ventricle, left lung and major vessels on left side, which can be attributed to the gun shot from the muddamal gun. During cross-examination, he admits that the injuries found on person of the deceased were possible with muddamal muzzle loading gun or a Tamancha.

6. What emerges from these pieces of evidence is that the deceased died of injuries caused with a gun fire, which is possible

with the muddamal gun, which is a muzzle loading gun. The said gun is alleged to have been used by the appellant, as per the say of witness-Alsibhai Bhimsibhai. The muddamal gun has been discovered by the appellant-accused in presence of Panch witnesses and that discovery is proved through witness-Oghadbhai Karabhai (Exhibit 17). The witness has fully supported the discovery and his deposition has remained unshaken during cross-examination.

6.1 The death of the deceased, therefore, is homicidal and attributed to the appellant. Involvement of the appellant is established through deposition of Alsibhai and there is no material to render the deposition doubtful. The deposition cannot be thrown overboard only because this witness happens to be relative of the deceased. Apart from Alsibhai, there are depositions of Nitin Durlabh and Jova Kala, who support the version of Alsibhai by saying that they saw the appellant firing a shot on the deceased and then running away from the place with the gun. The resultant effect is that the prosecution has successfully established that the appellant caused death of the deceased by firing gun shot with the muddamal gun on the deceased.

7. The next question that requires consideration is whether the case would be that of a murder or a culpable homicide not amounting to murder.

7.1 In the above context, if the evidence is seen, it is clear that the appellant and the deceased had an earlier monetary transaction whereby the appellant had borrowed Rs.50/- from the deceased by pledging his wrist watch. On the day of the incident, the appellant wanted his wrist watch back from the deceased without returning Rs.50/-. He, however, tried to assure the deceased that he would return Rs.50/- later on. Somehow, the deceased did not agree with it and his denial annoyed the appellant. It appears from deposition of Khoda Natha (Exhibit 14) that prior to the incident also, there was some dispute between the two on some issue and, at that time, they were separated by the village people. This will have a bearing on the conduct of the appellant. After the above incident, as narrated by witness-Khoda Natha, the present incident has occurred. When the deceased was standing with Alsibhai, the appellant went to them armed with an

unlicensed loaded muzzle loading gun and demanded his wrist watch back and, on denial by the deceased, he fired shot at him from a very close quarter. This is reflected not only from deposition of Alsibhai but also from medical evidence, where it is indicated that around the entry wound, there was blackening of the skin. This conduct on the part of the appellant would clinch the issue on question of whether it is a case of murder or culpable homicide not amounting to murder. The appellant had a dispute with the deceased prior to the incident on the same day and they were separated by village people. At the time of the incident, the deceased was in company of Alsibhai, where the appellant goes to him armed with a gun, which was previously loaded and, on his demand being dissatisfied, he gets annoyed and fires a gun shot. The shot is fired from a powerful gun on vital part of the body (chest) from a very close range. There is no room for inferring any other intention on the part of the appellant but to cause death of the deceased.

7.2 An attempt seems to have been made to show that there was a scuffle between the two and the shot was fired accidentally.

But that aspect, the defence is unable to bring out. Witness-Alsibhai specifically denies such a suggestion. An attempt is also made to show that there was a quarrel resulting into a scuffle to suggest that the deceased may have lost control. But to this effect also, there is no specific suggestion or admission. There was no reason for the appellant to carry an unlicensed muzzle loading gun in a loaded condition. The muzzle loading gun requires a procedure to be followed for loading, which was done by the appellant before reaching the place of incident. This has to be seen in the backdrop of earlier quarrel between the two on the same day. All these facts lead us to believe that the appellant had intention of causing death of the deceased by opening the fire in the event the deceased did not agree to return the wrist watch. Resultantly, in our view, there is ample evidence on record to show that the appellant caused murder of the deceased and the Trial Court is, therefore, justified in recording conviction for the offence of murder.

8. The appellant was armed with a gun for which he did not possess any licence. Not only the gun is used by him in the

incident and identified by eye-witness to the incident as such, but also the gun has been discovered by the appellant in presence of Panch witnesses. Under the circumstances, his conviction under the Arms Act also deserves confirmation.

9. We, therefore, find no merit in the appeal. The appeal must fail and is dismissed. The judgment and order of conviction and sentence recorded by the Trial Court is hereby confirmed.

[A. L. DAVE, J.]

[BANKIM N. MEHTA, J.]

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